

INFORMATION BULLETIN #29

SALES TAX

DECEMBER, 2002

(Replaces Information Bulletin #29 dated July 1994)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the statutes, rules or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current statute and procedures related to the subject matter covered herein.

SUBJECT: Sales of Food

REFERENCES: IC 6-2.5-5-20, IC 6-2.5-5-21, IC 6-2.5-5-22

INTRODUCTION:

Generally, the sale of food for human consumption is exempt from Indiana sales tax. The law specifically lists food items which constitute "tax exempt" foods as well as "taxable" foods. Primarily, the exemption is limited to the sale of food items commonly referred to as "grocery" food. The purpose of this bulletin is to assist Indiana retailers in the proper application of this exemption.

A number of items sold by grocery stores, supermarkets, and similar type businesses are classified in this bulletin under the headings "nontaxable grocery food items" and "taxable grocery items". These examples are for illustrative purposes and are not intended to be all-inclusive.

I. Non-taxable Grocery Food Items:

The Indiana sales tax does not apply to the sale of the following food items:

Baby food	Marshmallows
Bakery products	Meat and meat products
Baking soda	Milk and milk products
Bouillon cubes	Mustard
Cereal and cereal products	Natural spring water
Chocolate (for cooking purposes only)	Nuts, including salted, (but not chocolate or candy coated)
Cocoa	Oleomargarine
Coconut	Olive oil
Coffee and coffee substitutes	Peanut butter
Condiments	Pepper
Cookies	Pickles
Crackers	Potato chips
Dehydrated fruits and vegetables	Powdered drink mixes (presweetened or natural)
Deli items, Deli trays, party trays	Relishes
Eggs and egg products	Salad dressings and dressing mixes
Extracts, flavoring as an ingredient of food products	Salt
Fish and fish products	Sauces
Flour	Sherbets
Food coloring	Shortenings
Fruit and fruit products	Soups
Gelatin	Spices
Honey	Sandwich spreads
Ice cream, toppings, and novelties	Sugar, Sugar products, and Sugar substitutes
Jams	Syrups
Jellies	Tea
Kernel popcorn	Vegetables and Vegetable Products (excluding salad bars)
Ketchup	Vegetable oils
Lard	Yeast

Some items in the above categories will be subject to tax if they are sold and prepared for immediate consumption. See Section II E. for further information.

II. Taxable Grocery Items:

The following grocery items are subject to Indiana sales tax:

Alcoholic beverages	Medicines not prescribed
Candy and confectionery	Paper products
Candied apples	Pet food and supplies
Chewing gum	Prepared popcorn
Chocolate covered nuts	Products sold in vending machine - sizes available for immediate consumption
Cocktail mixes (dry or liquid)	Soap and soap products
Dietary supplements (see Household supplies (brooms, mops, etc.)	Soft drinks, sodas, and Tobacco products
Ice	Tonics and vitamins
Liver oils, cod and halibut	Toothpaste
Lozenges	Water, including mineral, distilled, flavored, bottled, carbonated, and soda

A. Confectionery Items:

Preparations of fruits, nuts, or popcorn in combination with chocolate, sugar, honey, candy, or other confectionery are not considered exempt food items. The method used in packaging and distributing these preparations including the kind and size of container used will be considered in determining the primary use for which these preparations are sold. The fact that these items contain ingredients which, if purchased separately, are considered exempt, does not exempt these items

Chocolate commonly used for cooking purposes will be considered exempt food within the meaning of this information bulletin. The method used in packaging and distributing chocolate, including the kind and size of container used, will be considered in determining the primary use for which it is sold.

B. Soft Drinks. Sodas. and Similar Beverages:

Any soft drink which contains carbonated water is subject to tax. Other drinks which may not contain carbonated water, but are normally purchased for consumption out of soft drink bottles or cans will be subject to tax. This would include, for example, chocolate drinks. The term "soft drinks" does not include fruit and vegetable juices. Some beverages contain less than one hundred percent (100%) fruit juice. However, any beverage which contains fruit juice and no carbonated water will be exempt from tax.

C. Dietary Supplements:

Sales of dietary supplements are subject to Indiana sales tax. The term "dietary supplements" includes powdered mixes and meal substitutes specially designed for weight gain, loss, or control, irrespective of the fact that the product may substitute for meals. This includes products such as Figurines, Carnation Diet Drinks, Slimfast, Slender, and Ensure.

Sales of food prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the sales tax if dispensed by a registered pharmacist or sold by a licensed physician.

D. Water:

All sales of water, except natural spring water, are subject to Indiana sales tax. In determining what constitutes natural spring water, retailers may rely on the labeling of the product as a means of identification. While the Department considers natural spring water to mean all water that comes from a spring and has no artificial or manufactured additives, such a method of identification lends itself to easy application by retailers. Therefore, the label must include the words "natural spring water" in order for the water to be exempt under the natural spring water exemption. It should be noted that the brand name need not contain the words "natural spring water", it is only necessary that the words or phrase appear somewhere on the label. All water (except natural spring water) including mineral, distilled, bottled, carbonated, soda, and flavored is taxable.

E. Food Sold for Immediate Consumption: Combination Business:

Food sold for immediate consumption at or near the merchant's premises, or sold through a grocery store salad bar, bakery or delicatessen is subject to sales tax. These sales are taxable even though such food is sold on a "take out" or "to go" basis and is actually taken from the premises of the seller. Where and when the customer actually eats the food is immaterial. If a location combines the sale of grocery items with the sale of food for immediate consumption, sales of the latter are taxable. The sale of food for immediate consumption is taxable even if the merchant does not provide a place to eat the food.

Any food cooked to the order of the purchaser, which is cooked and maintained at or near the cooking temperature prior to sale, or prepared food which is sold by the piece shall be subject to the sales tax. The kind and size of the order and packaging used will be considered in determining whether items are for immediate consumption. For example, individual orders such as a cup of ice cream, the sale of a single pastry, or single servings of pie or cake are taxable regardless of whether they are sold for consumption on the premises or are

bagged, wrapped, or packaged on a "take out" basis for off premise consumption.

All food sold through a vending machine or by a street vendor is subject to sales tax regardless of the size of the package or the type of food sold. The fact that the item qualifies as "food for human consumption" if sold by a grocery store does not make the purchase exempt if sold through a vending machine.

III. Coupons. Redemption Certificates. and Bottle Deposits

Coupons or redemption certificates received by the seller as payment or partial payment of merchandise are considered as cash if such coupons are redeemable to the seller and were not extended by the seller.

Example: A cigarette manufacturer issues a coupon for two dollars off on a carton of cigarettes. The tax is applied to the original price and then the discount is given. If the seller reduces the price of cigarettes by two dollars per carton and only rings up the discounted price, then the selling price is subject to tax, and not the original price. The difference is that in the first example the seller will send the coupon to the manufacturer and be reimbursed the two dollars.

Charges for bottle deposits are not subject to sales tax and should be removed from the total on which sales tax is computed. The refund of bottle deposits are not deductible when computing taxable receipts.

IV. Purchases by Retailers

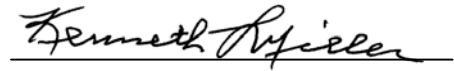
Purchases by the retailer of merchandise for resale and material for non-returnable packaging of merchandise sold is exempt from sales tax.

Gifts and premiums given by a retailer are not purchases for resale and such items are subject to the sales tax when purchased by the retailers. The retailer cannot purchase cash registers, equipment cleaning supplies, cash register tapes, sales tickets and other similar items exempt since the retailer is the final consumer of these items. The retail merchant must pay sales tax on all such items. Sales of merchandise to employees are subject to sales tax on the full final sales price.

V. Registration and Record Keeping Requirements

All grocers and other general merchandise retailers are required to file an application for a registered retail merchant's certificate for each location. Upon application with the Department of Revenue and the payment of a twenty-five dollar (\$25.00) fee, a permanent certificate will be issued which must be displayed on the premises at all times.

Indiana retail merchants are required to keep adequate books and records for both taxable and non-taxable sales for a period of three (3) years, plus the current year.

A handwritten signature in black ink, reading "Kenneth L. Miller", is positioned above a horizontal line.

Kenneth L. Miller
Commissioner